IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 5947 of 2007()

CC.883/2004 of J.M.F.C.,CHALAKUDY
CRIME NO.149/07 OF MALA POLICE STATION

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: PETITIONER/ACCUSED

P.L.PRINCE,S/O.LONAPPAN, 32 YEARS,
PARASSERY HOUSE,ALAMATTOM,KUNDOOR PO,
TRICHUR DISTRICT, PIN-680 734.

BY ADV. SRI.SARVOTHAMAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5947 of 2007

Dated this the 4th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 377 I.P.C. The alleged incident took place in 2001. Crime was registered then. Investigation is complete. Final report has been filed. The case was registered as C.C.No.883 of 2004. The petitioner has not appeared before the learned Magistrate so far. Coercive processes have been issued against the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. He contends that the allegations, even if accepted, cannot amount to an offence punishable under Section 377 I.P.C. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He hence prays that direction under Section 438 and/or 482 Cr.P.C may be issued in his favour.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is for the petitioner to surrender before the learned Magistrate and seek regular bail in the ordinary course. There are no circumstances justifying the invocation of the extraordinary equitable/inherent discretion/jurisdiction under Sections 438/482 Cr.P.C.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and seek regular bail. The petitioner can raise his contention including the contention that the allegation will not constitute an offence under Section 377 I.P.C before the learned Magistrate. I find no features in this case which would justify the invocation of the discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor, that it is for the petitioner to surrender before the learned Magistrate and seek regular bail.

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-